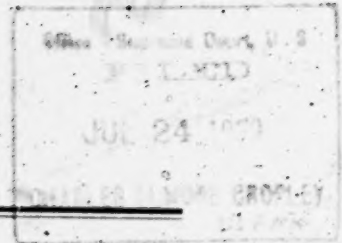


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IN THE
Supreme Court of the United States
OCTOBER TERM, 1939
No. 18

HAROLD F. SNYDER,

Petitioner,

vs.

CITY OF MILWAUKEE,

Respondent.

BRIEF FOR PETITIONER

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I. OPINION OF THE COURT BELOW

This case comes to this Court pursuant to certiorari granted on April 17, 1939.

The opinion below was reported in 283 N.W. 301.

II. JURISDICTION

1. The statutory provision is Judicial Code Section 237-b as amended by the Acts of February 13, 1925 and March 8, 1934, U.S.C. Title 28 Section 344-b.

2. The date of the judgment is January 10, 1939 on which date the Wisconsin Supreme Court affirmed the

conviction herein (R. 23). No application for rehearing was made.

3. The nature of the case and the rulings below bring the case within the jurisdictional provisions of Section 237-b, *supra*.

The claims of federal constitutional right were specifically raised up at the trial by motion at the commencement of the trial (R. 1) and by similar motion at the conclusion of the trial (R. 1). The Trial Court in rendering judgment ruled against the federal claims (R. 8). The Supreme Court of the State in its opinion specifically passed upon the claims of federal right and overruled the same (R. 20 ff.).

The federal rights claimed by petitioner are that the ordinance under which he was convicted is, upon its face, as applied to him, unconstitutional in denying to him due process of law under the Fourteenth Amendment to the United States Constitution and the equal protection of the laws under the United States Constitution. The first of these claims is grounded upon the contention that petitioner's right to freedom of speech and freedom of the press were violated by the prohibition of the distribution of handbills contained in said ordinance (§ 865, Art. 16, Milwaukee Code 1914—R. 7) and by the insufficiency of the charge upon which he was tried. The ordinance in question is as follows:

“(From Article 16 of Ch. XVII—‘Health’—
of the Milwaukee Code)

Article 16 is headed: ‘Garbage, Rubbish, Nauseous Substances and Odors.’

§ 865 is headed: ‘Throwing filth, rubbish or nauseous substances on streets, etc., and reads as follows:

'It is hereby made unlawful for any person, firm, or corporation, or for any officer, member, agent, servant or employe of any firm or corporation to place, throw or leave any slops, dirty water, or other liquid of offensive smell, or other nauseous or unwholesome, or any dead carcass, (fol. 12) carrion, meat, fish, entrails, manure or other nauseous or unwholesome matter or substance, or any rubbish, ashes, paper, dirt, stones, bricks, manure, tin cans, boxes, barrels, or other substances whatsoever, or to circulate or distribute any circular, handbills, cards, posters, dodgers or other printed or advertising matter, or to drain or pour or to permit to drain or flow oil, kerosene, benzine, or other similar oil or oily substance or liquid, in or upon any sidewalk, street, alley, wharf, boat landing, dock or other public place, park or ground, within the city of Milwaukee. Provided, however, that this section shall not apply to any garbage, manure, ash boxes or receptacles, which are built and maintained not less than twelve inches above the grade of the alley, nor more than three feet from the line of any lot or parcel of land abutting upon any alley in said city. Said boxes so built and maintained shall be waterproof, and shall at all times be kept securely covered except when depositing or removing the contents therefrom.' (The relevant portion is in italics).

The second claim of federal right rests upon the undisputed fact (R. 2, 17) that the police of the City of Milwaukee in enforcing this ordinance consistently failed to arrest the actual litterers of the street and instead arrested only the persons distributing the leaflets.

4. The following cases, among others, sustain the jurisdiction:

Lovell v. Griffin, 303 U.S. 444;

Hague v. C.I.O., 59 Sup. Ct. 954;

Yick Wo v. Hopkins, 118 U.S. 356.

III. STATEMENT OF THE CASE

Petitioner was convicted for distributing a leaflet dealing with a labor controversy (R. 8). There was no contention that petitioner had littered the streets and the trial court found that he had not (R. 2), but only that others who had accepted the leaflets had, to some extent, littered the streets (R. 2). The evidence showed (R. 9, 11, 14) that the police officers did not arrest anyone who accepted the handbill and threw it on the street and that this was in accordance with the general policy of the Police Department to arrest only the distributors.

Originally, petitioner was discharged on the ground that the ordinance was unconstitutional but upon an appeal by the City of Milwaukee, the Circuit Court of Milwaukee reached a contrary conclusion (R. 7), which was affirmed by the Supreme Court of that state (R. 23).

The Supreme Court rested its decision largely on the case of *Milwaukee v. Kassen*, 203 Wis. 383, 234 N.W. 352 (R. 21). The *Lovell* case was distinguished on the ground that the ordinance restricted distribution throughout the city and was not aimed to prevent the littering of streets (R. 22). The Court was of the view that the Milwaukee ordinance did not unreasonably restrict the constitutional rights of defendant, stating:

"Unless and until delivery of the handbills were shown to result in a littering of the streets, their distribution cannot be interfered with" (R. 23).

ERRORS ASSIGNED

The court deprived petitioner of his constitutional right to due process of law as guaranteed by the Fourteenth Amendment, by

1. Refusing to hold the ordinance invalid on its face.
2. In sustaining the conviction of an offense not charged.
3. In refusing to hold the ordinance invalid in spite of admitted discriminatory administration.

PETITIONER'S CONTENTIONS

I.

The ordinance in question is invalid on its face.

II.

The conviction is invalid, because petitioner was not charged with the offense of which he was convicted.

III.

Discriminatory administration of the ordinance rendered it invalid, if it had not been invalid on its face.

SYNOPSIS OF ARGUMENT

Under *Lovell v. Griffin*, leaflet distribution, is a constitutional right under the Fourteenth Amendment.

Petitioner is charged only with distribution.

He did not litter the streets.

His conviction cannot be justified because others threw handbills in the streets.

The conviction can be upheld only if a municipality may prohibit harmless acts, because harm may result from the acts of others.

This is contrary to *Stromberg v. California* and *Herndon v. Lowry*.

The Wisconsin court sustains the ordinance by limiting it to cases resulting in littering.

The contention that ordinances of this kind are aimed at littering, is specious.

Restriction of freedom of speech and of the press, is permissible only to prevent serious evil to the State.

This Court passes upon the necessity of Police Power Legislation.

Before the decision of this Court in *Lovell v. Griffin* other courts held anti-distribution ordinances invalid.

Since that decision other cases have ruled the same way.

In the Hague case, this court held the ordinance void on its face, and modified the injunction which was restricted so as not to apply where distribution caused littering.

Other courts have come to a contrary result by attempting to distinguish the ordinances.

But the constitutional question received little consideration.

The chief distinction claimed in the three cases now before this Court is, that ordinances in those cases are limited to distribution on streets, while the ordinance in the Lovell case applied to distribution throughout the city limits.

This distinction has no validity.

It is also argued that the ordinance in the Lovell case was not aimed at littering, while the present ordinance is.

The present ordinance is an absolute prohibition of distribution.

The reference of the Chief Justice to littering in the Lovell case was intended to refer to the littering by the person charged with violation of the ordinance, not by others.

Since street meetings may not be prohibited, because listeners may resort to violence, so distribution may not be prohibited, because recipients may litter.

The evil can be prevented by punishing the actual wrongdoers.

Petitioner was convicted of distribution, resulting in littering, he was charged only with distribution.

This violates due process of law.

It is analogous to the question in the *De Jonge* case.

It is undisputed that the City of Milwaukee has refrained from arresting those who littered the streets, but has arrested distributors.

This is discriminatory administration.

It renders the ordinance invalid, if it were otherwise valid.

POINT I.

Appellant's Conviction Was Without Due Process of Law in Violation of His Right of Freedom of Speech and of the Press.

This Court having, in *Lovell v. Griffin*, 303 U.S. 444, ruled that the Fourteenth Amendment protects leaflet distribution, the question now arises whether such pro-

tection can be destroyed under the pretext of preventing the littering of streets. That municipalities may punish street littering is, of course, not disputed. But in the case at bar the offense charged was not littering, but distribution. Respondent justifies the charge on the ground that littering resulted from the distribution. It is, however, not claimed that appellant himself littered the streets, and indeed the evidence is to the contrary. The only claim is that some of the persons who accepted the literature which appellant handed out, subsequently threw it away (R. 14).

If the offense charged against appellant had been littering and the proof had been only that here adduced, serious questions of proximate cause would have been raised. However, since the offense charged was not littering, but distribution, the conviction can be upheld only if a municipality may prohibit an act harmless in itself on the theory that in some instances harm may result from that act. It is submitted that this Court has, in *Stromberg v. California*, 283 U.S. 359, ruled otherwise. In that case a conviction for display of a red flag in "opposition" to government was reversed because the statute made no distinction between opposition manifested by lawful means or such opposition when manifested by unlawful ones. A similar view was expressed by Mr. Justice Roberts in *Herndon v. Lowry*, 301 U.S. 242 at page 259:

"And where a statute is so vague and uncertain as to make criminal an utterance or an act which may be innocently said or done with no intent to induce resort to violence or on the other hand may be said or done with a purpose violently to subvert government, a conviction under such a law cannot be sustained."

So in the case at bar the statute punishes distribution unaccompanied by littering, as well as distribution which has such consequences.

But, if it be argued that the State Court has, by its construction of the ordinance, limited its application to distribution actually accompanied by littering (see R. 23), we nevertheless believe that the ordinance violates constitutional guaranties. Justification for an ordinance of this more limited character is sought in the police power. And it is argued that, since municipalities have the right to prevent littering, the courts may not inquire whether the means used are appropriate or necessary. With this principle of judicial self-restraint (compare Mr. Justice Stone dissenting in *United States v. Butler*, 297 U.S. 1 at 78) counsel would be the last to disagree. But it is submitted that this principle has no application to the problem now before the Court.

For when the police power comes into conflict with the basic democratic rights of freedom of religion, press and assembly, the conflict must be resolved in different terms. See suggestion by Mr. Justice Stone in *United States v. Carolene Products Co.*, 304 U.S. 144, 152, note 4. This Court, in the *Lovell* case, recognized the importance in American life of the political pamphlet. In these troubled times the free distribution of varying points of view is of the utmost importance. There are many groups in the community, religious, political or economic, who are not able to command either the radio or the press for the distribution of their ideas. The only way that they can be heard is by the distribution of leaflets and pamphlets. Such distribution, in order to reach the general public, must be on the public streets. It is absurd to suppose that any effective circulation of minority opinion is possible in communities where ordi-

nances of the kind now under review are permitted to operate. The contention that such ordinances are directed against littering and not against distribution is specious and should not receive the sanction of this Court. To stop littering no such drastic ordinance is needed.

To say that the courts may not consider the necessity for the restriction upon freedom of speech and of the press because of a claim that the police power has been exercised would result in the destruction of such basic rights. Therefore, restriction of these rights is permissible only when necessary to prevent serious evil to the state. That was recognized in *Strömberg v. California*, supra, where the Court upheld part of the statute there under consideration because it punished incitement to the overthrow of organized government by unlawful means.

In *De Jonge v. Oregon*, 299 U.S. 353, the Chief Justice said:

"These rights may be abused by using speech or press or assembly in order to incite to violence and crime. The people through their legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed.

"The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government."

In *Herndon v. Lowry*, supra, this Court held unconstitutional a statute which punished an attempt to incite insurrection by persuasion because the utterances upon which the prosecution rested were themselves not unlawful. Mr. Justice Roberts, speaking for the majority of the Court, rejected the contention of the state in that case that utterances having a "dangerous tendency" could be punished. He said:

"The power of a state to abridge freedom of speech and of assembly is the exception rather than the rule and the penalizing even of utterances of a defined character must find its justification in a reasonable apprehension of danger to organized government. The judgment of the legislature is not unfettered. The limitation upon individual liberty must have appropriate relation to the safety of the state. Legislation which goes beyond this need violates the principle of the Constitution."

And applicable to this situation is also the statement of Mr. Justice Holmes in *Schenck v. United States*, 249 U.S. 47 at page 52:

"The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree."

It has long been a rule of this Court that the question of the necessity of an alleged police power regulation is ultimately for the court to decide.

"Prohibitory legislation has repeatedly been held invalid, because unnecessary, where the denial of liberty involved was that of engaging in a particular business. The power of the courts to strike down an offending law is no less when the interests in-

volved are not property rights, but the fundamental personal rights of free speech and assembly."

Whitney v. California, 274 U.S. 357, concurring opinion of Messrs. Brandeis and Holmes, J. J., 372.

See also

Weaver v. Palmer Bros., 270 U.S. 402, 410.

Even before the decision of this Court in the *Lovell* case there had been numerous decisions declaring unconstitutional similar ordinances. The earliest of these was *People v. Armstrong*, 73 Mich. 288, 41 N.W. 275 (1889).

See to like effect *City of Chicago v. Schultz*, 341 Ill. 208, 173 N.E. 276 (1930); *Ex parte Pierce*, 127 Tex. Cr. 35, 75 S.W. 2d 264 (1934); *In re Cox*, 122 N.J. L. 150 (1937); *New Rochelle v. McCormick*, West. L. J. June 11, 1935, p. 997. See also various unreported cases, such as *City of Newark v. Hill*, 1, I. J. A. Bull. No. 12, p. 2; *People v. Toth*, 2 I. J. A. Bull. No. 5, p. 2; *People v. Goren*, 4 I. J. A. Bull. No. 3, p. 3; See also 5 I. J. A. Bull. p. 147, ¶ cf.; *Star Company v. Brush*, 185 App. Div. 261, 172 N.Y. Supp. 851 (1918); *Dearborn Publishing Company v. Fitzgerald*, 271 F. 479 (1921); *In re Campbell*, 64 Calif. App. 300, 221 Pac. 952 (1923); *People v. Armentrout*, 118 Calif. App. 761, 1 P. 2d 556 (1931).

In some cases the courts have limited the application of similar ordinances to commercial literature on the ground that any application of the ordinances to pamphlets generally would be an unconstitutional deprivation of free speech. See *People v. Johnson*, 117 Misc. 133, 191 N.Y. Supp. 750 (1921); *Coughlin v. Sullivan*, 100 N. J. L. 42, 162 A. 177 (1924).

Since the decision of this Court in the *Lovell* case, there have been decisions to like effect. In *C.I.O. v. Hague*, 25 F. Supp. 127, Judge Clark of the District Court of New Jersey considered that case controlling with regard to an ordinance of Jersey City which banned the distribution of leaflets on streets and public places. He recognized that ordinances having the broad sweep of the ordinance now before the Court are designed rather to restrict the circulation of ideas than to prevent the littering of streets, saying:

"The strategy in the use of ordinances designed and phrased to protect the streets against being littered with the consequent clogging of sewers, fire and disease hazards and the traditional frightening of horses, for the purpose of protecting the minds of the people who walk those streets against being littered with certain kinds of ideas and again, traditionally perhaps, being frightened."

In the Circuit Court of Appeals this portion of the decree of the District Court was unanimously upheld. Judge Biggs held the ordinance to be "squarely within the decision" of the *Lovell* case.

In this Court also the ordinance was held void on its face within the *Lovell* case. (*Hague vs. C.I.O.*, 59 Sup. Ct. 954, 965). Indeed this Court struck out from the decree of the Court below (see 101 F. 2nd 774 at 795) provisions which so restricted the injunction that it would not be applicable where the leaflets were distributed in such a way as to cause littering of the streets.

In *People v. Taylor*, the Appellate Department of the Superior Court of California, for the County of San Diego (not yet reported), affirmed a dismissal of a charge based on an ordinance which, like the ordinance now before the Court, prohibits the distribution of leaflets upon

any street, park or public place. See also *People ex rel Gordon v. McDermott*, 169 Misc. 743; *People v. Gilione*, 3 L.R.R. 597 (1938); *People v. Finkelstein*, 4 L.R.R. 77 (1939). For other unreported cases see 7 I. J. A. Bull. No. 1, p. 4. (numbered 162 in error)

On the other hand, in addition to the case at bar, and the two other cases now before this Court, a contrary result was reached by the Appellate Department of the Superior Court in California in the case of *People v. Jones*. (See Los Angeles Daily Journal, August 9, 1938, and 7 I. J. A. Bull. p. 31. See also unreported cases cited in foot-note 15 on page 32).

These decisions rested in part on earlier decisions in the same jurisdictions, in part on an attempted distinction between the ordinances in question and the ordinance involved in the *Lovell* case. The earlier cases relied on are in the main inapplicable. Thus in the case at bar the Court relied upon *Milwaukee v. Kassen*, 203 Wis. 383, 234 N.W. 352; in the *Nichols* case the Court relied on *Commonwealth v. Kimball*, 1938 Mass. Adv. 267, 13 N.E. 2nd, 18; in the *Young* case the Court relied on *People v. St. John*, 108 Calif. App. 779, 288 Pac. 53; *Sieroty v. City of Huntington Park*, 111 Calif. App. 377, 295 Pac. 564, and *San Francisco Shopping News Company v. City of South Francisco*, 69 F. 2nd 879, certiorari denied 293 U.S. 606, in addition to the cases already cited, and also *In re Anderson*, 69 Nebr. 686, 96 N.W. 149.

In the *Kassen* case the Court rested its conclusion largely on the *Anderson* case; besides appellant conceded the validity of the ordinance. In the *Kimball* case the constitutional issues were given scant consideration by the Court. In the *Sieroty* case and the *San Francisco Shopping News Company* case no question of free speech

was involved or even discussed, since the ordinances were aimed only at advertising matter. In the *St. John* case, which also dealt only with advertising matter; the Court expressly doubted whether it would be possible to prohibit distribution of religious and political pamphlets without interfering with the constitutional guaranty of free speech.

The *Anderson* case, which is the chief reliance of the prosecution in all these distribution cases, is really not an authoritative decision at all. It is clear that the defendants in the *Anderson* case actually caused littering since the Court distinguished between their acts which constituted distribution "upon the sidewalk" and other acts prohibited by the ordinance, namely, the handing of circulars to others on the public streets. But in any event the weight of authority, as indicated by the cases previously cited, is against the proposition that *distribution*, as distinguished from *littering*, can be prohibited. It is interesting to note, moreover, that in the *Anderson* case the Court justified its conclusion by citing *Commonwealth v. Davis*, 162 Mass. 510. The *Davis* case was considered to be authority for the view that a statute forbidding public meetings in a public park violated no rights of free speech—this Court has now repudiated that view in the *Hague* case.

The chief distinction attempted in the three cases now before this Court is that the ordinance in the *Lovell* case applied to distribution *throughout the city limits*, whereas the ordinances in the other cases applied only to distribution *on the city streets*. It is submitted that that distinction has no validity. Many of the cases cited above held ordinances unconstitutional which were restricted only to distribution on the streets or in public

places. Such, notably, was the situation in *Hague v. C.I.O.* supra.

The second ground of distinction taken is that the ordinance in the *Lovell* case was not aimed at street littering, whereas the ordinance in the case at bar was so aimed. However, the ordinance in the case at bar is an absolute prohibition not confined to distribution resulting in littering.

In support of that argument reliance is placed in the case at bar (R. 22) on the statement by the Chief Justice in that case. It is submitted that the reference in that opinion to littering of the streets was intended to refer to the littering of streets by the person charged with the violation of the ordinance. In the case at bar the ordinance is not limited to distribution accompanied by street littering on the part of such distributor.

Moreover, in order to prevent street littering, means other than the complete prohibition of distribution can be employed. Municipalities can provide receptacles for waste paper, they can increase their street cleaning force, they can probably most effectively stop street littering by arresting the actual litterers.

Finally, there is an underlying fallacy in the argument that leaflet distribution may be prohibited because of the possible littering by the recipients. By the same logic it could be argued that all street meetings could be prohibited because of the possibility that listeners to the speakers may obstruct traffic or because some of the listeners may offer violence to the speaker. This last, indeed, was the argument advanced by Mayor Hague in the *C.I.O.* case above referred to which has met with rebuff from this Court. In all these situations the evil

which the municipality may correct, namely, street littering, obstruction of traffic or disorderly conduct, can be prevented by the punishment of those actually committing the wrong, not by prohibition of a lawful act. As a speaker, whose address is lawful, is entitled to police protection against persons who might break up his meeting and cannot be arrested as a disturber of the peace, even though others use his speech as a pretext for violence, so the distributor of a pamphlet entirely lawful in its contents should not be subject to arrest because someone who accepts the pamphlet from his hands later throws it away.

POINT II.

Defendant's Conviction Was Without Due Process of Law in That He Was Not Charged With the Offense of Which He Was Convicted.

Appellant in the case at bar was charged with the violation of an ordinance which prohibited distribution of literature (R. 20). He was convicted of having distributed the literature in a manner such that street littering resulted (R. 6, 23). The Court expressly stated that a conviction based on distribution alone could not have been sustained, yet appellant was at no time charged with littering or even with distribution which produced or caused littering.

Even if it be assumed, as has been done in the foregoing discussion, that a statute is constitutional which punishes distribution because of the littering which may result from such distribution, it is submitted that the conviction in the case at bar fails to meet the requirements of due process of law.

It is settled that it is not only the interpretation of the statute which controls, but also the manner in which the statute is applied to the facts in the particular case. See *Herndon v. Lowry*, supra. Therefore, even if the statute as construed is constitutional so that a distributor might be punished upon proof of littering caused by others, nevertheless he cannot be so punished unless he is charged with such offense. If, as claimed by the prosecution this ordinance could be upheld as valid because it has been interpreted to apply only to cases where the distribution produces littering, then the charge should have been as broad as the ordinance. To charge a person with distribution and to convict him of distribution resulting in littering is in itself a denial of due process. See the statement of the Chief Justice in the *deJonge* case, supra, at page 362.

In the *deJonge* case defendant had been charged with speaking at a meeting, not with anything which he did at the meeting. There was some evidence to indicate that he had distributed literature at the meeting containing illegal statements. An attempt was made at the argument of the case in this Court to suggest that the conviction could be justified on the basis of this evidence, but it was clearly pointed out by several of the Justices during the argument that no such conviction was permissible since no such charge had been made. And in his opinion the Chief Justice characterized such a possibility "as sheer denial of due process." So, in the case at bar, it would be such sheer denial to justify a conviction on proof of littering in a case where the complaint contained no reference whatever to littering. Surely defendant had a right to suppose that he was being charged with distribution only and to secure an acquittal because such distribution was wholly lawful.

POINT III.

**Defendant's Conviction Should Be Set Aside Because
the Ordinance Has Been Enforced in a Dis-
criminatory Manner.**

It is undisputed in the case that it has been the policy of the police department, in enforcing this ordinance, not to arrest any persons who throw circulars or handbills on the streets or public places, but to arrest the distributors who hand them out (R. 9, 11, 14). The evidence also showed that this was the practice followed with reference to petitioner and the other defendants. It has been the consistent policy of the City of Milwaukee to ignore that part of the ordinance which would have effectively prevented littering of the streets, and to enforce the prohibition against distribution, notwithstanding that the distributor did nothing but distribute.

The rule of law with reference to unconstitutional administration is not logically or rationally limited to discrimination on account of race or color. It is the doctrine of this Court that

"A valid law may be wrongfully administered by officers of the state so as to make such administration an illegal burden and exaction upon the individual."

C. B. & Q. R. Co. v. City of Chicago, 166 U.S. 226, 233 et seq., 17 Sup. Ct. 581, 41 L. Ed. 979.

Discriminatory administration of otherwise apparently valid laws renders them unconstitutional.

Yick Wo v. Hopkins, 118 U.S. 356;

Crowley v. Christensen, 137 U.S. 86, 91, 11 Sup. Ct. 13, 34, L. Ed. 620;

Raymond v. Chicago Union Traction Co., 207 U.S. 20, 35, 28 Sup. Ct. 7, 52 L. Ed. 78;

Ah Sin v. Wittmann, 198 U.S. 500, 26 Sup. Ct. 767, 49 L. Ed. 1142;

Dobbins v. Los Angeles, 195 U.S. 223, 240, 49 L. Ed. 169.

The City has not only not enforced the law against those who actually littered the streets, but it has never enforced it against general distribution on the public streets of newspapers and periodicals, notwithstanding the express language of the act by which it applies to all printed matter.

There is apparent the discriminatory administration as against the impecunious citizens, the poor minority, which cannot afford to buy space in our expensive newspapers and periodicals to express its views to its fellow-men. The labor union, as in the instant case, does not generally have the money to make use of the high-priced privately owned press of the country to disseminate its views. The poor religious sect, the sincere and self-sacrificing social reformer, the political liberal and others not of financial ability to spend large sums to distribute their opinions, views and beliefs, are denied the only feasible method of using their constitutional right to disseminate their views. Such method of enforcement creates the unconstitutional condition which renders the law invalid.

CONCLUSION

It is, therefore, respectfully submitted that the judgment of conviction should be reversed and the complaint dismissed.

Respectfully submitted,

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